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NOTES AND SUGGESTIONS

JEFFERSON AND THE VIRGINIA CONSTITUTION

IN the *Nation* for August 7, 1890, appeared a valuable article by the prince of American antiquarians, Mr. W. C. Ford, on Jefferson's draft of the constitution of Virginia. After a century of oblivion this important document was discovered by Mr. Ford, and in the article in the *Nation* was described and criticized. The document itself has been published in the *William and Mary College Quarterly* for July, 1892, by Miss Kate Mason Rowland, of the famous Mason family of Virginia, and both "first draft" and "fair copy" by Mr. Paul Leicester Ford in the second volume of the *Writings* of Jefferson. It, however, has recently been discovered that Jefferson's draft had been published and discussed as early as 1806. It had, as is well known, been given by Jefferson, then in Congress, to Wythe for presentation to the convention. Found in the papers of Wythe, on his death in the year named, by his close friend and executor, William Duval, the manuscript was shown to Thomas Ritchie, editor of the *Richmond Enquirer*. In that paper, June 20, 1806, for the first time the Jefferson draft of the constitution of 1776 was published, along with an "original" Declaration of Independence.

The editorial note accompanying the two documents is of interest and follows:

Among the literary reliques of the venerable George Wythe, were found the following rare and curious papers in the handwriting of Mr. Jefferson. The first is a copy of the original Declaration of Independence, as it came from the hands of the author. The other is a plan of a Bill of Rights and of a Constitution for Virginia, composed by Mr. Jefferson. For the permission to peruse and publish these papers, we are indebted to the politeness of Mayor Duval, the sole executor of the estate. . . . The *Bill* and *Constitution* as we have them in manuscript, are without any mark to note the date of their production. It is presumed however, that they were written in 1776. The Constitution, written by Mr. Jefferson, in '83, is already published in the Appendix to some of the Editions of his *Notes on Virginia*.

The publication of the draft in the *Enquirer* appears to have been unnoticed or forgotten. There were, however, other men besides Duval and Ritchie who caught a glimpse of the original manuscript; it would appear from the succeeding extract that it was deposited

somewhere in the archives of Virginia, from which it disappeared, as have many other relics of those momentous days.

William Wirt in the following brings us to 1818, for in his *Life of Henry*, in a note on page 196 (first three editions), he says: "There now exists among the archives of this State, an original draught of a constitution for Virginia, in the handwriting of Mr. Jefferson." By 1829, however, the document seems, from the speech of Benjamin Watkins Leigh quoted below, to have disappeared from the archives. Speaking as a Conservative in the Constitutional Convention of 1829-1830, Leigh, like Mr. Ford, raises the question of Jefferson's democracy in 1776.

I know [he says] that Mr. Jefferson himself prepared a Constitution for Virginia, and sent it to Williamsburg that it might be proposed to the Convention, during the session. . . . I have seen the project of the Constitution, which Mr. Jefferson offered, in the Council Chamber, in his own handwriting, tho' it cannot now be found—and I have since cursed my folly that I neglected to take a copy of it, in order to compare Mr. Jefferson's democracy of *that day*, with George Mason's practical republicanism.

In 1829, as we know, Leigh belonged to the reactionary school of thinkers who no longer recognized the authority of the great Democrat.

I know of little else with regard to the history of Jefferson's draft. It would certainly be of great interest to discover what became of the manuscript used by Thomas Ritchie and to determine whether it was the same as either of the drafts discovered by Mr. W. C. Ford. An effort has been made to solve that problem, but without success. But however profitable a discussion of the identity of the documents would be, I am much more interested in the *interpretation* of the Jeffersonian constitution. There would seem to me considerable difficulty in accepting the theory that Jefferson's proposals were undemocratic or were more undemocratic than the constitution as adopted in 1776. It is true that in Jefferson's draft there are odd suggestions here and there; but a detailed comparison with the constitution as adopted would seem to make certain that Jefferson's ideas were certainly not *less* democratic than those adopted and also not inconsistent, in important respects, with his well-known opinions of later years. After a careful consideration of the subject, one may be pardoned for suspecting that it was not its late arrival alone that prevented the adoption of Jefferson's plan.

According to Jefferson:

All male persons of full age and sane mind, having a freehold estate in [one-fourth of an acre] of land in any town, or in [25] acres of land in

the country, and all persons resident in the colony who shall have paid scot and lot to government the last [two years], shall have right to give their vote in the election of their respective representatives.

This section represents an advance over the suffrage qualifications in Virginia accepted by the constitution of 1776, and is exactly in line with Jefferson's later democratic contentions. The same democratic advance is seen in Jefferson's scheme of apportioning representation on the basis of the distribution of electors. This is beyond anything Virginia has enjoyed down to the present day. Inasmuch as the constitutional battles in Virginia from 1829 to 1850 were to be fought around these two points of democracy, suffrage and apportionment of representation, they must be emphasized as essential features fixing the radically democratic character of his proposals. The effort further to democratize the holding of land, prohibiting the appropriation of public land to any already holding as much as fifty acres, and the provision in his constitution that "Descents shall go according to the law of Gavelkind, save only that females shall have equal rights with males", are of peculiar importance. As a matter of fact, one of the things in which Jefferson was at this time distinctly interested and continued to be interested was a land policy. In 1785 he found property in France concentrated in a few hands and thought that legislators "cannot invent too many devices for subdividing property". Facing the problem for America he said:

It is too soon yet in our country to say that every man who cannot find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landowners are the most precious part of the State.

The innocent or fantastic looking provisions in his constitution of 1776 are part of a programme much more important than how this or that man should obtain office. Of equal significance is the provision that "No person hereafter coming into this country shall be held within the same in slavery under any pretext whatever", and the provision that "All persons shall have full and free liberty of religious opinion; nor shall any be compelled to frequent or maintain any religious institution."

It is easy to put too much emphasis on the structural side of Jefferson's programme. That was not where Jefferson's heart was; his heart was in the promotion of popular participation in government through a wide privilege of franchise and the equal distribution of representation: but even more in the promotion of religious and economic equality of opportunity. His heart was in a democ-

racy that counts. But even on the structural side, Jefferson's draft, from the point of view of democracy, stands the test of a comparison with the constitution as adopted. In the plan adopted large powers of appointment were placed in the general assembly. In Jefferson's plan these powers were placed in the "House of Representatives"—in the body closest to the people. Jefferson likewise provides for the popular election of sheriffs; the constitution as adopted placed their choice with the governor on nomination of the county courts. Further, the constitution as adopted had no provision for amendment. But in Jefferson's draft occurs the following:

None of these fundamental laws and principles of government, shall be repealed or altered, but by the personal consent of the people on summons to meet in their respective counties on one and the same day by an act of legislature to be passed for every special occasion; and if in such county meetings the people of two-thirds of the counties shall give their suffrages for any particular alteration or repeal referred to them by the said act, the same shall be accordingly repealed or altered, and such repeal or alteration shall take its place among these fundamentals and stand on the same footing with them in lieu of the article repealed or altered.

As a matter of fact, Jefferson did not propose that the *first* constitution should go into effect until it had been passed on by the people. For according to Jefferson's intention: "It is proposed that this bill, after correction by the convention, shall be referred by them to the people, to be assembled in their respective counties; and that the suffrages of two-thirds of the counties shall be requisite to establish it." It does not seem to me that the similarity of Jefferson's plan with that of "A Native", sponsored by Carter Braxton, is more than superficial. Limitations of space make impossible a detailed comparison here. The great reforms, however, in descent, labor, landholding, suffrage, apportionment, the method of amending the fundamental law, religious liberty, which Jefferson provided for are ignored by the "Native". There was little about Jefferson's proposals to be ashamed of. There is little in them that is undemocratic. If the "Native's" draft was a programme of the views of "the dons, the bashaws, the grandees, the patricians, the sachems, the nabobs", the scheme adopted, even with its noble Bill of Rights, was an effective system for the preservation of the political, geographical, and economic inequalities of Virginia before the Revolution. Jefferson's programme was a thorough overhauling of internal conditions in the new commonwealth and the establishment of equality of privilege and opportunity. George Mason was a wise, patriotic, and practical man, but he was not a social reformer; Jef-

ferson was. Wythe was writing to a sympathetic friend when on July 27 he wrote Jefferson, "the system agreed to in my opinion requires reformation. In October I hope you will effect it."

During the rest of his life, when in Virginia, Jefferson was endeavoring to "effect it"; his draft of 1776 in its essential features was not a contrast with his later ideas, but the charter of the fundamental reforms for which the author of the Declaration of Independence and the Bill for Religious Freedom fought until his death. Nor is the force of this statement diminished by the fact that Jefferson came to believe in a popularly elected executive and judiciary. The wonder is not that he was so conservative and fantastic in 1776, but that he was so democratic and farseeing.

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